

I answered specifically every question raised by Mr. Avery & devoted 2 more pages to dealing with the problems. See par. 3a-d my 22 Sep. Memo

As far as it needs to be, it is defined in par. 3.c. my Memo

I'm afraid we will find to our grief that in its popular sense as explained in para. 3.c. it is well known to a lot of people, including our Boards of Review.

24 September 1947

If so, strange that not one of the 16 people on the Teams, to whom my 17 July Memo went, has ever raised a question about it to date. They knew what is meant.

MEMORANDUM (Copy)

SUBJECT : Technological Efficiency

TO : Mr. Charles Dilley

From : Creighton Coleman

1. Your memorandum of 22 September 1947 on the subject matter does not, to my mind, answer the problems raised by Johnston Avery. Before any "new" policy is adopted I would like to add a couple of comments to his.

2. You have not defined what you mean by "technological efficiency" in any of the papers that I have seen other than to state that it means "those industrial techniques and relationships which are among the determining factors in high or low per-unit cost of production". Until I know what you mean both as to the phrase and the definition I find it very difficult to agree with your conclusions. I can not agree that the subject phrase is well known, in fact I would say that it may be almost unknown to other than economists and, at least in my opinion, it in no way has the history behind it that have the phrases "due process of law" and "affected with a public interest". These latter two phrases now include a great number of cases which give us a background and principles which are involved therein. On the other hand, if I am wrong and if "technological efficiency" is a legal concept I would like to have the citations. I certainly at this time am not prepared to have the success or failure of this Branch depend on our ability to prove that our plans for action do not substantially effect "those industrial techniques and relationships which are among the determining factors in high or low per-unit cost of production."

3. I do have a pretty fair idea of what "deconcentration" means in the anti-monopoly field. We do have many precedents on this matter in the United States, Canada and other countries. I think our job is to enforce a deconcentration law which has been often and carefully stated as U.S. policy. If we conceive of our job as being one of challenging engineers and operational personnel on their own grounds, which is what we are forced to do when we state as a policy the measure of "technological efficiency", then I believe we had better change our emphasis in personnel matters, discharge our economists and lawyers and hire engineers and men who have "run" a paint brush factory or who have "successfully" distributed a line of commerce and let them tell us the score.

By your logic these two phrases never should have been adopted on the ground of not being previously well known.

If nothing we ever do can effect it, we shouldn't worry about anybody proving that it had. That would be impossible.

We don't have to prove anything to anybody, we only need to be guided by sound principles.

Our minds, wherein we become "convinced", is not "their own grounds", it is our own very most familiar ground.

It is an economic concept which applies to the economic problems with which we are dealing.

Its history goes back to John Stuart Mill & perhaps to Adam Smith, whereas the phrase "affected with a public interest" did not become a part of the language of our jurisprudence until Munn.v. Ill in 1876.

I would very much like to have at least one good industrial engineer on our staff.

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(Signed  
Creighton Coleman)

No! Still confusing a principle with a formula.